IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/09/2002

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THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO. 3351 OF 1999

The Management of KCP Limited,
Engineering Unit,
rep. by its General Manager-Works,
Chennai 19. .. Petitioner

-Vs-

The Commissioner,
Tiruvottiyur Municipality,
Chennai 600 019. .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Krishna Srinivas for
M/s.Ramasubramanian & Associates

For Respondent : Mr.S.P. Meenakshi Sundaram

:J U D G M E N T

The petitioner, a private limited company, is engaged in the manufacture of equipment for cement, sugar, steel plants, pressure vessels by using various machineries. The petitioner company is running the factory within the respondent Municipality since 1957 by obtaining licence from the respondent on payment of necessary licence fee fixed by the respondent from time to time. Licence fee is being levied on the basis of horse power of various machineries used in the factory. Petitioner is aggrieved by the sudden increas e of licence fee as per the notification dated 11.9.1998 issued by the respondent Municipality and has sought for quashing the same.

2. The main contention raised by the petitioner is to the effect that without rendering any service whatsoever, the respondent has arbitrarily raised the licence fee which is grossly excessive and cannot be sustained in law.

3. At the time of entertaining the writ petition, an interim order has been passed by this Court staying the operation of the enhanced licence fee subject to payment of 25% of the amount as per the enhanced fee.

Subsequently, a petition for vacating the stay was filed by the respondent and on consideration, the interim order had been made final.

4. In the petition filed for vacating the stay, the petitioner has sought to justify the imposition of enhanced fee. It is necessary to extract the relevant averments made by the respondent in justification of the imposition of such enhanced licence fee, which are as follows :-

" . . . I further submit that the revision in license fees are commensurate with the services rendered by the Municipality and the revision is strictly according to the norms. The revision in license fees are neither arbitrary nor exhorbitant as the Respondent is using 1 6382 H.P of power for its manufacturing activities.

I humbly submit that the fees earlier levied and paid by the Respondent company was not at all in accordance to the steps now being taken by the Municipality for betterment of conditions and for development activities initiated for the welfare of the people. The earlier fee was fixed as early as on 1986 and the enhancement was done after a period of thirteen years taking into consideration various factors such as the additional expenses incurred by the Municipality in carrying out various development activities aimed at the welfare of the people and towards maintenance of civic conditions and for provision of salaries to civic workers which have to be increased keeping in view the increase in inflation and the wholesale index. Further, the earlier license fees were in accordance with the then prevailing expenditure of the Municipality and now due to increase in development activities the Municipality has been facing heavy deficits in its budgets and therefore the increase in license will definitely be justified.

I humbly submit that due to the above facts it was proposed to increase the license fee payable by undertakings and accordingly the procedure was followed. Further due to the increase in development activities associated with the administration of the Municipality, the increase in license rates have become evident and therefore the proposal was put forward to the public. If at all the Respondent/Petitioner were to be really aggrieved then it should have raised its voice when objections were called for by the Municipal Council. the Respondent/Petitioner is now estopped from claiming that the enhancement in rastes of license fee is exhorbitant without making any objections when the proposal was first put up."

5. The law is now well settled that there is a distinction between the fees charged for licence which are regulatory in nature and fees for the services rendered which are compensatory in nature. In the case of regulatory fees, like licence fees, existence of quid pro quo is not necessary although the fee imposed must not be excessive.

6. In 1965 SC 1107 (CORPORATION OF CALCUTTA vs. LIBERTY CINEMA) it was observed by the Supreme Court that under the Constitution fee for licence and fee for services rendered are contemplated as different kinds

of levy and licence fee is not intended to be a fee for services rendered and such licence fee may be charged in order to defray the costs of administering the local regulation or to increase the general funds.

7. In 1997 (2) SCC 715 (VAM ORGANIC CHEMICALS LTD. Vs. STATE OF U. P.) it was laid down that there is an essential distinction between fees charged for licence and the fees charged for services rendered. In the case of regulatory fee like the licence fee, existence of quid pro quo is not necessary although the fee imposed "must not be, in the circumstances of the case, excessive". (emphasis added)

8. In 1997(3) SCC 665 (STATE OF TRIPURA vs. SUDHIR RANJAN NATH) it was observed while considering the levy of application fee and licence fee :
" . . . It is regulatory fee and not compensatory fee. The distinction between compensatory fee and regulatory fee is well established by several decisions of this Court. Reference may be made to the decision of the Constitution Bench in Corporation of Calcutta v. Liberty Cinema (1965 SC 1107). It has been held in the said decision that the expression 'licence fee' does not necessarily mean a fee in lieu of services and that in the case of regulatory fees, no quid pro quo need be established."

` 9. Similar views have been expressed in 1997(2) SCC 727 (BIHAR DISTILLERY v. UNION OF INDIA) and 1999(2) SCC 274 (SECUNDERABAD HYDERABAD HOTEL OWNERS' ASSOCIATION v. HYDERABAD MUNICIPAL CORPORATION). In the latter case, while considering about the licence fee collected by the Municipality for running a lodging house, hotel, restaurant, coffee house, tea stall, eating house, soft drink stall, cafeteria, tiffin room etc. It was observed:
" . . . It is, by now, well settled that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the services although exact arithmetical equivalence is not expected. However, this is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation for such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for the levy of such fees is not required although such fees cannot be excessive.(emphasis added )"

10. Considering many of the above decisions and several other decisions, the Supreme Court in 2000(8)SCC 167 (A.P. PAPER MILLS LIMITED Vs. GOVT OF ANDHRA PRADESH AND ANOTHER) observed as follows :
" . . . From the conspectus of the views taken in the decided cases noted above it is clear that the impugned licence fee is regulatory in character. Therefore, stricto sensu the element of quid pro quo does not apply in the case. . .

. . . The question that remains to be considered is whether the enhanced licence fee under challenge is grossly high and excessive, and therefore arbitrary. . .” (emphasis added)

11. Judged in the light of the ratio of the aforesaid decisions, there cannot be any doubt that in the present case, the respondent has sought to impose licence fee which is regulatory in nature and not compensatory and therefore, the principle of quid pro quo is not strictly applicable and there may be some element of collection of revenue. Even then as observed by the Supreme Court in several cases, it has to be considered whether the fee now prescribed is “grossly high and excessive and therefore arbitrary”.

12. A perusal of the relevant portion of the notification indicates that in many instances there has been increase of fees by more than 10 times and in some casses even by about 20 times or even 50 times vis-a-vis the previous rate. It is no doubt that the increase has been made after a gap of about 13 years, but by applying any standard it appears that the increase ranging from 10 to 15 times at one stretch appears to be excessive and arbitrary and therefore, imposition of enhanced licence fee as per the impugned notification, so far as the present petitioner is concerned, cannot be sustained.

13. The question remains as to what direction should be given. As already noticed, at the time of entertaining the writ petition this Court had directed for payment of 25% of enhanced fees as condition for granting stay. In the facts and circumstances of the case, such interim direction appears to be very reasonable. Such amount thus collected as per the stay order passed by this Court which had been subsequently made final may be considered as the proper licence fee for the period already covered. So far as the future years are concerned, that is to say, 2003 and onwards, the Municipality is required to fix a reasonable fee keeping in view the observations made by the Supreme Court as well as in the present order. While prescribing such new fees, it is obvious that the Municipality is required to observe the relevant provisions contained in the Act. It is also made clear that this order would not govern the cases of persons/companies, etc., who have already paid the enhanced fees without demur and have not challenged the same by now.

14. Subject to the aforesaid observations and direction, the writ petition is disposed of without any order as to costs.

20-09-2002

Index : Yes
Internet : Yes
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To

The Commissioner,
Tiruvottiyur Municipality,
Chennai 600 019.

P.K. MISRA, J.

Judgment in
W.P.No.3351 of 1999